



COQUILLE INDIAN TRIBE

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February 5, 2007

Sent VIA email to IEED@bia.edu
And VIA First Class Mail

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
Room 20 – South Interior Building
1951 Constitution Avenue NW
Washington, DC 20245

RE: Draft Report to Congress Regarding Energy Policy Act of 2005, Section
1813, Indian Land Rights of Way Study

Dear Sir or Madam:

I am the Chairman of the Coquille Tribal Council. The Tribe submits the following comments in response to the December 21, 2006, Draft Report to Congress Regarding Energy Policy Act of 2005, Section 1813, Indian Land Rights of Way Study.

Generally, the Tribe supports the analysis and methodology used in the study. The study takes careful account of the broad federal policy of tribal self-determination and the legal status of federal trust land.

However, this study should directly address the federal / tribal trustee relationship. In particular, the study should include a deeper analysis of the fiduciary duties imposed on the federal government regarding the preservation and protection of trust lands.

The trust relationship should shape which policy options are viable. Some options in the report conflict with the federal government's trustee duties and policy of tribal self-determination. In particular, options 7.3, 7.4 & 7.5 for Congress are unacceptable to the Tribe.

Option 7.3 provides for Congress to authorize an executive agency to determine fair market compensation for all energy rights of way across tribal lands. This approach is inapplicable to tribal lands because they cannot be bought and sold like other lands

subject to valuation. Moreover, because either party could reject the valuation, this method merely establishes a value that one party can use as negotiating leverage. This policy also would fail to determine a fair market value for the property because a fair market price is one that a willing seller and willing buyer would pay (all other things being equal) *without* this policy. In other words, this policy could serve to alter the fair market price that the parties would otherwise negotiate.


Option 7.4 would require the parties to engage in binding arbitration once they reach a negotiating impasse. This alternative runs directly counter to the federal policy of tribal self determination. Tribes should have the authority to determine the values (and costs) of rights of way over tribal lands. This alternative places too much value on *resolving* an impasse in favor of granting a right of way. Option d second-guesses a tribe's assertion of its economic, cultural or spiritual values, all of which might influence a tribe's willingness to consent to an energy right of way. This option fails to recognize tribes' innate connection to the land, which often cannot be reduced to an arbitrated price.

Option 7.5 is unacceptable because it offends the Tribe's sense of dignity and self-determination. This option would authorize the condemnation of tribal lands for energy rights of way. If adopted, this alternative would fall in line with a number of failed federal policies attempting to assimilate tribes and their lands. This option reminds us of the long repudiated policy of Federal Termination, which directly caused a crisis of poverty among Indians in Western Oregon beginning in 1954. This policy clearly would violate our trust relationship and would put the Federal government—our trustee—in the position of advocating for energy interests. We believe that the proper role of the BIA is to help tribes prepare for energy ROW negotiations, rather than to facilitate the resolution of negotiating impasses.

An essential aspect of property ownership is the authority to determine who may and may not enter one's lands. Tribes should always retain this authority, especially over trust lands within the Tribe's aboriginal area, which it has occupied since time immemorial.

Thank you for the opportunity to comment on the Draft Report.

Sincerely,



Edward L. Metcalf, Chairman
Coquille Indian Tribe

cc: Mark Phillips, Edwards & Associates
George Smith, CIT Executive Director
Tim Vredenburg, CIT LRES Director
Coquille Tribal Council